

Public Hearing Questions for  
**Health Services and Development Agency**  
Created by Section 68-11-1604, *Tennessee Code Annotated*  
(Sunset termination June 2021)

1. Provide a brief introduction to the Health Services Development Agency, including information about its purpose, statutory duties, staff, and administrative attachment.

The Health Services and Development Agency is responsible for administering the Certificate of Need (CON) program, which addresses the unique conditions and characteristics of health care industries in which unnecessary duplication and saturation of facilities or services in a certain area can actually reduce access to necessary services and increase costs. The CON program requires review of the proposed establishment of certain health care institutions and certain services that affect health care availability, quality, and cost. The Agency meets bi-monthly in public meetings to consider CON applications and make decisions guided by the State Health Plan. CON decisions are made by an independent 11-member board consisting of three consumers, five health care industry representatives, the Comptroller of the Treasury, the Director of TennCare, and the Commissioner of Commerce and Insurance. HSDA is an independent body and not administratively attached to any department.

The Agency's statutory duties include the administration of the Certificate of Need program (TCA 68-11-1604) and the maintenance of a registry of certain types of major medical equipment (TCA 68-11-1607(i)).

HSDA has a full-time staff of eight, consisting of an Executive Director, Deputy Director, General Counsel, Information & Data Analyst, HSD Examiner, Health Data & Policy Administrator, Office and Resource Manager, and an Administrative Assistant.

	Total Number of Decided CON's	Number of CON's Approved	Number of CON's Denied	CON Approval Rate
<b>FY 2016/2017</b>	36	31	5	86.11%
<b>FY 2017/2018</b>	44	42	2	95.45%
<b>FY 2018/2019</b>	42	37	5	88.10%

2. Has the agency promulgated rules as authorized in Section 68-11-1605(3), *Tennessee Code Annotated*?

Yes, Agency rules are found under Chapter 0720 of the Effective Rules and Regulations of the State of Tennessee.

3. Provide a list of current members of the agency and describe how membership complies with Section 68-11-1604, *Tennessee Code Annotated*.

Douglas Scarboro – Governor’s Consumer Representative and Chair  
Rick Chinn – Lieutenant Governor’s Consumer Representative and Vice-Chair  
Thomas Alsup – Speaker of the House’s Consumer Representative  
Corey Ridgway – Representative of Ambulatory Surgical Treatment Centers  
Laura Beth Brown – Representative of Home Care  
Paul Korth – Representative of Hospitals  
Todd Taylor – Representative of Nursing Homes  
Keith Gaither – Designee of the Director of TennCare  
Jaclyn Harding – Designee of the Comptroller of the Treasury  
Lisa Jordan – Designee of the Commissioner of Commerce and Insurance  
Physician Representative – Currently vacant

4. How many times did the agency meet in the last two fiscal years? How many members were present at each meeting?

The agency has met every other month for the past two years, excepting April 2020 when the meeting was cancelled due to the challenges presented by COVID-19. Over the course of the remaining eleven meetings, there attendance was as follows:

August 2018 - 9 present  
October 2018 - 9  
December 2018 - 10  
February 2019 - 10  
April 2019 - 9  
June 2019 - 8  
August 2019 - 10  
October 2019 - 10  
December 2019 - 6  
January 2020 - 9  
February 2020 - 8  
June 2020 – 10  
August 2020 - 10

5. What per diem or travel reimbursement do members receive? How much was paid to agency members during the last two fiscal years?

All members, with the exception of state employee members, receive \$50.00 per diem per day per TCA § 68-11-1604(d)(1) and are reimbursed for all travel and other necessary expenses per State Travel Regulations.

FY 2018-2019: \$11,121.54  
FY 2019-2020: \$7,769.04

6. What were the agency’s revenues (by source) and expenditures for the last two fiscal years? Does the agency carry a reserve balance and, if so, what is the total of that reserve balance?

	Revenues	Expenditures
FY2020	1,714,967.47	1,184,134.75
FY2019	1,803,547.58	1,028,722.23

**\*Source: Dedicated Appropriations**

**Reserve Balance as of 6/30/2020: \$2,459,427.82**

7. Is the agency subject to Sunshine law requirements (Section 8-44-101 et seq., Tennessee Code Annotated) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the agency have for informing the public of its meetings and making its minutes available to the public?

HSDA is subject to Sunshine law requirements. Notice for all meetings is posted on our website, where Letters of Intent filed by applicants can also be found.

Once meeting minutes are approved by the board at the following hearing, copies of the minutes and other public records are provided (upon request) usually within 1-2 business days.

8. Does the agency allow for public comment at meetings? Is prior notice required for public comment to be heard?

Yes, the public may speak on any matter before the HSDA board with or without prior notification.

9. What policies or procedures does the agency have in place to address potential conflicts of interest by agency members, staff, and employees?

**TCA 68-11-1604(3)(7):**

(A) All agency members shall annually review and sign a statement acknowledging the statute, rules and policies concerning conflicts of interest.

(B) Any member, upon determining that a matter scheduled for consideration by the agency results in a conflict with a direct interest, shall immediately notify the executive director and shall be recused from any deliberation of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter.

The member shall join the public during the proceedings.

(i) Any member with an indirect interest shall publicly acknowledge such interest.

(ii) All members shall make every reasonable effort to avoid even the appearance of a conflict of interest. If a member is uncertain whether the relationship justifies recusal, the member shall follow the determination by the legal counsel for the agency.

(iii) A determination by the agency or any court that a member of the agency with a direct interest failed to provide notice and be recused from deliberations of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter, shall result in the member's automatic termination from the agency and the

position shall be considered vacant. The member shall not be eligible for appointment to any agency, board or commission of the state for a period of two (2) years.

(iv) The executive director, upon determining that a conflict exists for the executive director or any member of the staff, shall notify the chair of the agency and take such action as the chair prescribes and pursuant to this part.

#### Agency Rule:

0720-08-.02 CONFLICT OF INTEREST. (1) Definitions (a) "Conflict of interest" means any matter before The Agency in which the member or employee of The Agency has a direct or indirect interest that is in conflict or gives the appearance of conflict with the discharge of the member's or employee's duties; (b) "Direct interest" means a pecuniary interest in the persons involved in a matter before the Agency. This interest applies to The Agency member or employee, The Agency member's or employee's relatives or an individual with whom or business as to which the member or employee has a pecuniary interest. For the purposes of this part, a relative is a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, or nephew by blood, marriage or adoption; and (c) "Indirect interest" means a personal interest in the persons involved in a matter before the Agency that is in conflict or gives the appearance of conflict with the discharge of the Agency member's or employee's duties; (2) All Agency members shall annually review and sign a statement acknowledging the statute, rules and policies concerning conflicts of interest. (3) Any member, upon determining that a matter scheduled for consideration by The Agency results in a conflict with a direct interest, shall immediately notify the executive director and shall be recused from any deliberation of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter. The member shall join the public during the proceedings. (a) Any member with an indirect interest shall publicly acknowledge such interest. (b) All members shall make every reasonable effort to avoid even the appearance of a conflict of interest. If a member is uncertain whether the relationship justifies recusal, the member shall follow the determination by the legal counsel for The Agency. (c) A determination by The Agency or any court that a member of The Agency with a direct interest failed to provide notice and be recused from deliberations of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter, shall result in the member's automatic termination from The Agency and the position shall be considered vacant. The member shall not be eligible for appointment to any agency, board or commission of the state for a period of two (2) years. (d) The executive director, upon determining that a conflict exists for the executive director or any member of the staff, shall notify the chair of The Agency and take such action as the chair prescribes and pursuant to this part.

10. Please describe the agency's activities during the last two fiscal years to fulfill each of the duties outlined in Section 68-11-1605(1) through (5) and 1606 (c) and (d), Tennessee Code Annotated.

*TCA Section 68-11-1605(1) requires the Agency to “receive and consider applications for certificates of need, to review recommendations thereon, and to grant or deny certificates of need on the basis of the merits of such applications within the context of the local, regional and state health needs and plans, including, but not limited to, the state health plan developed pursuant to § 68-11-1625, in accordance with the provisions of this part”.* Those are the Agency’s very fundamental activities, and the Agency holds a public hearing every other month, at which it considers CON applications as directed by law.

*TCA Section 68-11-1605(2) requires the Agency to “review the state health plan as developed and submitted by the state health planning division and make recommendations to the state health planning division and the governor concerning the state health plan;”.* The Agency regularly follows development of the State Health Plan and revisions of the Standards and Criteria by which CON applications are evaluated by the HSDA board, and provides suggestions as those revisions go through drafts.

*TCA Section 68-11-1605(3) requires the Agency to “promulgate rules, regulations and procedures deemed necessary by the agency for the fulfillment of its duties and responsibilities under this part, including a procedure for the issuance of a certificate of need upon an emergency application where an unforeseen event necessitates the issuance of a certificate of need to protect the public health, safety and welfare, and where the public health, safety and welfare would be unavoidably jeopardized by compliance with the procedures established under other provisions of this part”.* The Agency has not promulgated any rules in the previous two fiscal years.

*TCA Section 68-11-1605(4) requires the Agency to “contract when necessary for the implementation of the certificate of need program as defined by this part”.* The only service the Agency contracts for is that a court reporter to record meeting minutes.

*TCA Section 68-11-1605(5) requires the Agency to “weigh and consider the quality of health care to be provided and the health care needs of consumers, particularly women, racial and ethnic minorities, TennCare or medicaid recipients and low income groups whenever the agency performs its duties or responsibilities assigned by law”.* Applicants are required to address each of these concerns in their application and the attestations of the applicants are scrutinized by Agency board members.

*TCA Section 68-11-1606(c) (1) requires the executive director to “keep a written record of all proceedings and transactions of the agency, which shall be open to public inspection during regular office hours”.* Transcripts and recordings of Agency meetings, application files, staff determinations, and other documents are kept in the Agency’s office. Agency records are available for public inspection during regular office hours. Requests for information or records are typically provided within 1-2 business days if the requested information can be sent electronically or picked up at the office, which is usually the case. Recordings and hard copies are usually mailed within 1-2 business days.

*TCA Section 68-11-1606(c) (2) requires the executive director to “administer the certificate of need process”. The Executive Director oversees the receipt and review of CON applications; submission of applications for department review; distribution of applications, agendas and other information to agency members; logistics of Agency meetings; provision of notice to the public; maintenance of the Agency’s website with information of use to the public; overseeing agency staff; Agency finances; issuance of staff determinations; conduct of contested cases; rulemaking; public records requests; other duties related to the CON program; and by communicating with Legislators, Agency members, other state agencies, press, affected constituencies and the general public.*

*TCA Section 68-11-1606(c) (3) requires the executive director to “represent the agency before the general assembly”. The Executive Director does so, as well as Agency staff at his direction.*

*TCA Section 68-11-1606(c) (4) requires the executive director to “oversee the issuance of responses to requests for determination regarding the applicability of the provisions of this part”. The Executive Director oversees the issuance of staff determinations by Agency counsel.*

*TCA Section 68-11-1606(c) (5) requires the executive director to “prepare the agenda, including consent and emergency calendars, and notice to the general public of all meetings and public hearings of the agency”. The Executive Director does so, as well as Agency staff at his direction.*

*TCA Section 68-11-1606(c) (6) requires the executive director to “employ such personnel, within the budget, to assist in carrying out the provisions of this part”. The Executive Director employs the above-referenced staff to assist in carrying out the provisions of this part.*

*TCA Section 68-11-1606(c) (7) requires the executive director to “carry out all policies, rules and regulations that are adopted by the agency and supervise the expenditure of funds. The Executive Director does so.*

*TCA Section 68-11-1606 (d) provides the Agency the authority to delegate certain duties which is within its discretion including (1) Granting approval, denial, deferral or referral to the agency of applications for certificate of need in accordance with § 68-11-1609; and (2) Granting approval or denial of modifications, changes of conditions or ownership, and extensions of certificates of need in accordance with this part. The Agency board has granted the authority to defer, modify, approve a change of condition or ownership, and extension but has not granted the authority to approve or deny CON applications.*

11. In addition to the activities enumerated in Question Number 10, please provide an explanation of any additional agency accomplishments in the last two fiscal years.

In the process of assisting the joint House-Senate CON Reform Working Group, Agency staff have developed a new CON review process that would reduce the total length of the process by more than 50% when certain statutory changes are made. This accomplishment has required a top-to-bottom analysis of the CON applicant review cycle and reorganization of Agency staff. Several other improvements to the process have also been developed through this collaboration and Agency staff are looking forward to the opportunity to implement them.

12. What reports does the agency prepare to provide the public and other interested parties with information about its activities, operations, and accomplishments? Who receives copies of these reports? Please provide a link to any reports issued in the last two fiscal years.

HSDA does not currently prepare any reports as a part of its duties.

13. Describe any items related to the agency that require legislative attention and your proposed legislative changes.

HSDA staff have been working with the joint House-Senate CON Reform Working Group. The final form of the legislation has not yet been determined by both chambers but the staff is committed to assisting the Working Group however it may.

14. Should this agency be continued? To what extent and in what ways would the absence of the agency affect the public health, safety, or welfare?

HSDA's primary program at this time is the Certificate of Need (CON) program. Although there is some disagreement about the impact of the CON program upon health care access, costs, and quality, there has been at least a majority consensus in the past that it does have a positive impact for Tennessee's patients. The joint House-Senate CON Reform Working Group recently spent a great deal of time and energy in developing improvements and modernizations to the program which will make it cheaper, quicker, and easier. If the sunset date for the Agency is extended, then that will give the General Assembly the opportunity to enact those reforms, evaluate their impact, and to determine whether further reforms are warranted.

15. Please identify the appropriate agency representative or representatives possessing substantial knowledge and understanding of the responses provided to the sunset review questions.

Logan Grant, Executive Director

16. Please identify the appropriate agency representative or representatives who will respond to the questions at the scheduled sunset hearing

Logan Grant, Executive Director

17. Please provide the office address, telephone number, and email address of the agency representative or representatives who will respond to the questions at the scheduled sunset hearing

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